

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed.
2. The Appeals Board affirms the Judge's finding that claimant fell at work and injured her back. The Appeals Board finds that the accident occurred on approximately May 12, 2000. The Board also affirms the Judge's finding that claimant told her supervisor about the accident on the day it occurred. Claimant testified that she believed a black plastic strap tripped her as she turned to walk away after breaking down a box. According to claimant, at least one coworker saw her lying on the floor immediately after the fall. Further, according to claimant, she spoke with two coworkers and her supervisor shortly after the incident. The Appeals Board finds claimant's testimony credible and persuasive, as did the Judge.
3. Workers have the burden of proof to establish their right to compensation and to prove the various conditions upon which that right depends.¹
4. "Burden of proof" means the burden to persuade by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²
5. Because claimant has proven that she injured herself while working for respondent and that she gave respondent timely notice of that accident, the request for preliminary hearing benefits should be granted.
6. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Appeals Board affirms the September 14, 2000 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

¹ K.S.A. 1999 Supp. 44-501(a).

² K.S.A. 1999 Supp. 44-508(g).

³ K.S.A. 1999 Supp. 44-534a(a)(2).

Dated this ____ day of November 2000.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
D. Steven Marsh, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director